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Held, that trade unions are unlawful at common law, so this action is not maintainable. *Baker v. Ingall*, 132 L. T. J. 131 (Eng., C. A., Nov. 30, 1911). See NOTES, p. 465.

TRUSTS — NATURE OF TRUST RELATION — CESTUI QUE TRUST AS TRUSTEE. — A testator devised property to A. in trust to pay the income to B. for life, and to pay B. any part of the principal which, in his judgment, B. might require for his support; remainder to A. *Held*, that another trustee should be appointed to manage the trust estate during the life of B. *Matter of Townsend*, 73 N. Y. Misc. 481 (Surr. Ct., Cattaraugus Co.).

The general rule that no one whose duty and interest may conflict should be appointed as trustee is everywhere recognized. *In re Harrop's Trusts*, 24 Ch. D. 717. Cf. *In re Tempest*, L. R. 1 Ch. 485. See 1 PERRY, TRUSTS AND TRUSTEES, 6 ed., § 59. The rule, being one of discretion, must occasionally yield to special circumstances. *Ex parte Conybeare's Settlement*, 1 Wkly. Rep. 458. In their application, however, the English courts follow the rule far more carefully than the American. Thus, an English court will not ordinarily appoint a relative or solicitor of a *cestui que trust*. *Wilding v. Bolder*, 21 Beav. 222; *In re Kemp's Settled Estates*, 24 Ch. D. 485. And a *cestui que trust* is in England never allowed to serve as sole trustee. *Re Lightbody's Trusts*, 52 L. T. J. 40. On principle and authority there is a difference between the appointment and removal of a trustee. *Curran v. Green*, 18 R. I. 329, 27 Atl. 596. A settlor or donee of a power to appoint a trustee may appoint as trustee a person whom the court would not itself appoint. *In re Earl of Stamford*, [1896] 1 Ch. 288, 299. But, it is submitted, in cases where the trustee's duty and interest will inevitably conflict, the court is justified in refusing to confirm a settlor's appointment. The English courts, in similar cases, have reached a result like that in the principal case. *In re Norris*, 27 Ch. D. 333.

TRUSTS — RIGHTS AND LIABILITIES OF THIRD PARTIES — PERSONAL LIABILITY OF TRUSTEES. — Trustees mortgaged the trust property and covenanted to pay the mortgage debt "as such trustees, but not otherwise." *Held*, that the trustees are liable personally for the mortgage debt. *In re Robinson's Settlement*, 46 L. J. 785 (Eng., Ch. D., Dec. 5, 1911).

A trustee is liable in full on contracts made for the trust estate, although he describes himself as "trustee." *Duval v. Craig*, 2 Wheat. (U. S.) 45; *Muir v. City of Glasgow Bank*, 4 App. Cas. 337. Since the estate cannot be liable at law, a judgment may always be had against him personally. *Taylor v. Davis' Admx.*, 110 U. S. 330, 4 Sup. Ct. 147. But he may everywhere limit his liability, expressly, to the amount of the trust fund in his hands. *Williams v. Hathaway*, 6 Ch. D. 544; *Shoe and Leather National Bank v. Dix*, 123 Mass. 148. It has been held in England that a clause exempting the trustee from "personal liability" attempts to destroy all liability and is void as being repugnant to the covenant itself. *Furnivall v. Coombes*, 5 M. & G. 736; *Watling v. Lewis*, [1911] 1 Ch. 414. Yet the plain intention of such a clause is only to exempt the trustee's own property. A different result would certainly be reached in the United States, where the constant practice is to regard the intention of the parties, retaining the presumption in favor of full liability. *Glenn v. Allison*, 58 Md. 527; *Germania Bank v. Michaud*, 62 Minn. 459, 65 N. W. 70. The principal case proceeds on the ground that to limit liability would here destroy it altogether. Cf. *Fehlinger v. Wood*, 134 Pa. St. 517, 19 Atl. 746. But, in the absence of misrepresentation, the plaintiff has consciously assumed the risk of such a result. *Day v. Brown*, 2 Oh. 345; *Thayer v. Wendell*, 1 Gall. (U. S.) 37. See *Hussey v. Arnold*, 185 Mass. 202, 204, 70 N. E. 87, 88. The words used can scarcely be considered ambiguous. Cf. *Gordon v. Campbell*, 1 Bell App. Cas. 428.